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No. 91-98

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

WHITE BUDD VAN NESS PARTNERSHIP,
Petitioner,

v.

MAJOR-GLADYS DRIVE JOINT VENTURE,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Texas

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REPLY BRIEF FOR PETITIONER

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Respondent flatly misrepresents the record by asserting (Opp. 4) that petitioner, in its redrawn applications, "changed to a small type size and reduced margins without any substantial change in the text of the brief." In fact, in preparing the First Redrawn Application, counsel for petitioner deleted text from 74 of the pages in the original Application for Writ of Error, including nine pages of text in their entirety, which reduced the text by approximately *one-third*. *See* Pet. App. 63a.

Respondent also falsely asserts (Opp. 3) that petitioner, in preparing the Second Redrawn Application, "again" reduced the margins of the Application. In fact, petitioner again shortened the text in preparing the Second Redrawn Application, deleting three points of error and the argument in support thereof and combining four points of error into a single point of error. Pet. App. 64a-

65a. The margins in the Second Redrawn Application actually measure approximately 1/16 of an inch *wider* than those in the First Redrawn Application.

Furthermore, contrary to respondent's assertion (Opp. 4), there was no clear "message" from the Texas Supreme Court concerning the size of typeface or margins. All communications from the Texas Supreme Court before its order of dismissal referred solely to the page limitation. *See* Pet. App. 67a-68a. Indeed, the Clerk of the Texas Supreme Court confirmed, in response to an inquiry from counsel for petitioner, that the court's objection was to the number of pages in petitioner's Applications. *See id.* at 56a-58a, 64a-65a. If the Texas Supreme Court wished to send a message concerning typeface and margins, it could have done so by a generally applicable rule or by an order entered in this case. Instead, the court left counsel to divine the nature of the court's objection on peril of dismissal.[1]

Respondent contends (Opp. 1) that the issue presented by this case is not "special" or "important" enough to warrant this Court's review. In fact, however, this case raises issues of fundamental importance. Litigants in state courts, which are playing an ever-increasing role in the American judicial system, are entitled to have their cases decided under uniform rules announced with fair notice and applied equally to all parties. Here, however, the Texas Supreme Court denied petitioner a hearing on the merits because it "violated" an unwritten rule regarding technical briefing requirements that is not applied to other litigants. The court's action is not only

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[1] Respondent also fails to note that its original brief to the Texas Supreme Court in response to the original Application also exceeded the page limitation, and that respondent, in its briefs to the Texas Supreme Court and the Texas Court of Appeals, used identical typeface to that used in the redrawn applications submitted by petitioner. *See, e.g.*, Reply Brief of Respondent filed November 26, 1990.

grossly unfair, but also creates an appearance of favoritism and bias. While typeface and margins are generally mundane topics, violations of the most basic attributes of due process by a state supreme court are not.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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